

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

M. BRUNNER AND J. FRY, *individually and
on behalf of all others similarly situated,*

Plaintiffs,

v.

FENIX INTERNET, LLC AND FENIX
INTERNATIONAL LIMITED,

Defendants.

Case No. 1:25-CV-3244

Honorable John F. Kness

DEFENDANTS' OPPOSED MOTION TO STAY

Defendants Fenix Internet LLC and Fenix International Limited (together, “Defendants”), by and through their undersigned counsel, respectfully move this Court for a stay of this action pending the ultimate resolution in the related and first-filed case, *McFadden, et al. v. Fenix Internet LLC, et al.* (1:23-cv-06151) (“*McFadden*”). In support of this Motion, Defendants state as follows:

1. On March 26, 2025, Plaintiffs filed a Class Action Complaint in the above-captioned action against Defendants. Dkt. 1.

2. Nearly two years ago, the same Plaintiffs’ counsel filed *McFadden*, also before this Court.

3. *McFadden* and *Brunner* contain near identical allegations and the claims are brought on behalf of the same purported class of Plaintiffs.

4. After filing *Brunner*, Plaintiffs’ counsel moved to reassign *Brunner* to this Court because the allegations and claims arise from the same operative facts. That motion was granted on April 14, 2025. *McFadden*, Dkt. 87.

5. In *McFadden*, the parties have concluded substantial briefing on Defendants’ motion to

dismiss for (1) lack of personal jurisdiction, (2) *forum non conveniens* (based on a binding forum selection clause that mandates plaintiffs litigate in England), and (3) failure to state a claim.

6. On November 4, 2024, the Court held oral argument on the motion to dismiss (*McFadden*, Dkt. 69) and on May 21, 2025, the parties participated in a hearing, pursuant to Federal Rule of Civil Procedure 44.1, where the parties presented testimony of their English law experts. *McFadden*, Dkt. 95.

7. That hearing was continued, and the parties are scheduled to continue that hearing on July 17, 2025. *McFadden*, Dkt. 97.

8. Defendants anticipate that the exact issues briefed by the parties on Defendants' motion to dismiss in *McFadden* – lack of jurisdiction, *forum non conveniens*, and failure to state a claim – are expected to be asserted by Defendants in response to Plaintiffs' Complaint in *Brunner*.

9. Defendants request a stay pending resolution of *McFadden* to simplify the issues in question, reduce the burden of litigation on parties and on the court, and prevent prejudice on either party.

10. Pursuant to the Court's Standing Order, Defendants sought concurrence in this Motion with counsel for Plaintiffs. Plaintiffs' counsel does not concur in the relief sought.

WHEREFORE, Defendants respectfully request that the Court grant their motion to stay this action pending the ultimate resolution in the related and first-filed case, *McFadden, et al. v. Fenix Internet LLC, et al.* (1:23-cv-06151).

Date: June 2, 2025

Respectfully submitted,

/s/ Matthew L. Kutcher

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